

**BEFORE THE LAND USE HEARING EXAMINER  
OF CLARK COUNTY, WASHINGTON**

Regarding an application by Osprey Development for ) **FINAL ORDER**  
approval of a preliminary plat to divide 0.57-acres into )  
8 townhouse lots in the R-18 zone at 7900 & 7906 NE ) **PLD 2004-00078<sup>1</sup>**  
25<sup>th</sup> Avenue in unincorporated Clark County, Washington) **(25th Avenue Townhomes)**

**A. SUMMARY**

1. The applicant requests approval to divide the 0.57-acre site into 8 townhouse lots. A new single-family attached dwelling will be built on each of the proposed lots. All proposed lots will comply with the minimum dimensional standards for townhouses in the R-18 zone. Clark Public Utilities and The Hazel Dell Sewer District will provide domestic water and sanitary sewer service respectively. The site's 25<sup>th</sup> Avenue frontage is improved to current County standards. No additional right of way dedication or road improvements are proposed with this development. However the applicant is required to install landscaping within the 25<sup>th</sup> Avenue right of way. The applicant proposes to extend a new private street (NE 81<sup>st</sup> Street) into the site from 25<sup>th</sup> Avenue to provide access to the lots. All of the proposed lots will have driveway access to NE 81<sup>st</sup> Street. The applicant proposes to collect storm water from impervious areas of the site, treat it in an underground "stormfilter" system and direct it to the existing stormwater facility in the adjacent Brown's Manor subdivision west of the site for detention. The applicant will release treated stormwater to the existing public storm sewer system at less than predevelopment rates.

2. The applicant also requests approval of administrative variances to the street side and rear yard setbacks for homes on the proposed lots. The applicant proposes to reduce the required ten foot street-side setback along NE 25<sup>th</sup> Avenue to nine feet. The applicant also proposes to reduce the five foot side setback between proposed lots 2 and 3 & lots 6 and 7 to four feet.

3. The County issued a Determination of Nonsignificance ("DNS") for the subdivision pursuant to the State Environmental Policy Act ("SEPA"). Hearing Examiner Joe Turner (the "examiner") conducted a public hearing to receive testimony and evidence about the application. County staff recommended that the examiner approve the application subject to conditions as amended at the hearing. See the Development & Environmental Review Staff Report & Recommendation to the Hearing Examiner dated November 8, 2004 (the "Staff Report"). The applicant accepted those findings and conditions as amended with certain exceptions. Two persons testified at the hearing with objections and questions. Other persons testified in writing. Disputed issues or concerns in the case include the following:

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<sup>1</sup> This decision also addresses SEP2004-00142, EVR2004-00072, VAR2004-00018 and ARC2004-00065 and the associated road modification.

a. Whether the location of homes on the site will impact adjacent homes in violation of Code requirements;

b. Whether the proposed development will exacerbate flooding problems on adjacent properties;

c. Whether the applicant is required to retain existing mature trees on the site;

d. Whether the applicant can delay the installation of landscaping on and abutting the site until prior to final occupancy approval of the homes on the site; and

e. Whether the required driveway design is appropriate for the proposed development.

4. Based on the findings provided or incorporated herein, the examiner approves the subdivision subject to the conditions at the conclusion of this final order.

## **B. HEARING AND RECORD**

1. The examiner received testimony at a public hearing about this application on November 23, 2004. That testimony and evidence, including a videotape of the public hearing and the casefile maintained by the Department of Community Development ("DCD"), are included herein as exhibits. A list of the exhibits is attached to and incorporated into this final order. The exhibits are filed at DCD. The following is a summary by the examiner of selected testimony and evidence offered at the hearing.

2. County planner Richard Daviau summarized the Staff Report and showed photographs of the site. He opined that the reduced setbacks allowed by the proposed variances will be imperceptible. He noted that the County received comment letters from the Washington Department of Ecology regarding known contaminant sites in the area and from the Cowlitz Indian Tribe regarding potential archeological issues. Exhibits 22 and 24. He opined that changes to the recommended conditions of approval are not warranted to respond to the comment letters.

3. Attorney David Ward and professional engineer Eric Golemo appeared on behalf of the applicant.

a. Mr. Ward summarized the proposed development. He accepted the findings and conditions in the Staff Report with certain exceptions.

i. He requested the examiner modify condition of approval A.5 to require an "F16" driveway approach for the intersection of the private street, proposed 81<sup>st</sup> Street, and 25<sup>th</sup> Avenue. The F17 style approach recommended by the County is usually required for major commercial developments. It is unnecessary to accommodate the small volume of residential traffic generated by the proposed development. He

submitted copies of the “Standard Drawings” illustrating the driveway designs. Exhibits 25 and 26.

ii. He noted that the stormwater system serving the Brown’s Manor subdivision west of the site was designed to accommodate stormwater runoff from roughly 10,000 square feet of impervious surface on this site. The proposed development will create 12,000 square feet of impervious surface area. It is not feasible or necessary to redesign the existing stormwater facilities to accommodate runoff from the additional 2,000 square feet of impervious surface area. The applicant will mitigate the impact of the additional runoff to some extent by treating all of the stormwater leaving the site. He requested the examiner modify condition of approval A.7 as recommended by Staff in Exhibit 21 to allow the applicant to treat the runoff with a water quality catch basin, subject to County approval.

iii. He noted that requested the examiner modify conditions A.3 and E.9 to allow the applicant to install landscaping prior to final occupancy of the homes on the site, rather than prior to final plat approval. Construction of homes on the individual lots is likely to damage any landscaping that is installed prior to final plat approval.

iv. He testified that the applicant will retain the existing trees on the site to the extent feasible as shown on the preliminary plat. The applicant will remove the existing trees on the west portion of the site to accommodate the installation of utilities and other improvements. The applicant will plant additional trees in this area as shown on the proposed landscape plan. If any additional trees are removed, the applicant will plant replacement trees as necessary to comply with the landscaping requirements of the Code.

v. He noted that the applicant conducted an archeological review of the site. No cultural resources were found and the County concluded that no further archaeological work is necessary. Condition of approval D.2 requires that the applicant place a note on the face of the final plat requiring notice to the state Office of Archaeology and Historic Preservation if any cultural resources are discovered on the site. Additional conditions are not warranted.

vi. He noted that the western portion of the home proposed on lot 4 will be one story tall, reducing the amount of shading on homes to the west. The homes on the site will meet or exceed the setback requirements of the Code.

b. Mr. Golemo testified that the proposed development will not exacerbate the existing runoff problems noted by Ms. Straight. Lots 43 through 47 of the Brown’s Manor subdivision north of the site slope towards the common property line with the site. Stormwater runoff from those lots currently flows south to the common boundary and then west to a catch basin near the northwest corner of the site. The proposed development will not increase the rate or volume of runoff leaving the site. If necessary,

the applicant will install a cut off drain in the rear yard of the proposed lots to capture runoff before it leaves the site.

4. Harriett Borsuch expressed concern with the impact of the development on her home in the Brown's Manor development west of the site. She noted that the home on lot 4 will be setback 6 feet from her property line, blocking her view and preventing any natural from entering her windows.

5. Tamara Straight questioned how the applicant will accommodate stormwater runoff from the site. There is a stream of stormwater flowing along the north boundary of the site, the south boundary of lots 43 through 47 of Brown's Manor, under existing conditions. She questioned whether the proposed development will exacerbate that problem.

6. County development engineer Paul Knox agreed with the applicant's request to install landscaping prior to final occupancy approval rather than prior to final plat. He testified that the concrete approach required by condition A-5 is intended to clearly distinguish the boundary between the private and public streets. The F16 driveway proposed by the applicant would provide the required separation and should be allowed.

7. The examiner closed the record at the end of the hearing and announced his intention to approve the application subject to the conditions recommended by County staff as amended at the hearing.

### **C. DISCUSSION**

1. County staff recommended approval of the preliminary subdivision plat and related applications, based on the affirmative findings and subject to conditions of approval in the Staff Report. The applicant accepted those findings and conditions without exceptions.

2. The examiner concludes the affirmative findings in the Staff Report as modified show the proposed preliminary plat does or can comply with the applicable standards of the County Code and Revised Code of Washington, provided the applicant complies with recommended conditions of approval. The examiner adopts the affirmative findings in the Staff Report as his own, except to the extent they are inconsistent with the findings in this order.

3. Homes constructed on the site will obstruct views from and limit the amount of natural light that reaches existing homes on adjacent properties. However the examiner does not have authority to require additional setbacks or to require the buildings to be oriented or designed in a certain way to protect adjacent properties. The Code does not include such restrictions other than a 35-foot height limit and the setback requirements. The home on proposed lot 4 will be "stepped", with the western portion limited to one story, which will reduce its impact on adjacent properties.

4. The examiner finds that the proposed development will not cause or exacerbate flooding and drainage problems on abutting properties.

a. It is apparent from the topographic maps in the record that surface run-off from the site flows downhill onto the adjoining properties to the north under existing conditions. Development on the proposed lots will increase the amount of impervious surface area on the site. Therefore it will reduce the area where water can infiltrate. Absent any other improvements, that would increase the volume of stormwater run-off discharged off-site.

b. Grading and filling on the site will alter the existing topography and could potentially increase run-off onto adjacent properties. However the Code expressly prohibits such impacts. CCC 40.380.060.C(1)(g) provides that “no development within the urban growth area shall be allowed to materially increase or concentrate storm water runoff onto adjacent property or block existing drainage from adjacent lots.” The examiner finds, based on the applicant’s preliminary stormwater report, that it is feasible to comply with CCC 40.380.060.C(1)(g). The applicant is required to obtain County approval of a final stormwater plan before beginning construction on the site. See Condition E-5. The applicant can grade the site to direct runoff away from adjacent properties or install drains near the boundaries of the site to capture surface water before it leaves the site.

5. Development of the site as proposed may require removal of some of the existing trees on the site. However the County Code does not regulate tree removal in the circumstances in this case. This site and the surrounding area are zoned for single-family residential uses. Substantial clearing is necessary to develop the site consistent with the applicable zoning. Some of the existing vegetation on the site must be removed to develop roads, utilities and building sites. The examiner acknowledges there is substantial, mature vegetation on the site. However the County Code allows removal of even substantial, mature trees. The applicant proposed to retain some of the existing trees in the southwest corner of the site. The applicant will plant additional trees along the boundaries of the site to provide a buffer between the site and abutting properties. See Sheet 3 of 4 of Exhibit 5.

6. CCC 40.320.010(C) requires that the applicant install landscaping around the perimeter of the site. CCC Table 40.320.010-1 requires an L-1 buffer<sup>2</sup> along the north, south and west boundaries, where the site abuts lands zoned R-18, and an L-2 buffer<sup>3</sup> along the east boundary of the site, across the street from C-3 zoned lands. CCC

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<sup>2</sup> The L1 standard consists principally of groundcover plants; trees and high and low shrubs also are required. There are two ways to provide trees and shrubs to comply with an L1 standard. Shrubs and trees may be grouped. Groundcover plants, grass lawn or approved flowers must fully cover the landscaped area not in shrubs and trees. CCC 40.320.010.B(1).

<sup>3</sup> The L2 standard requires enough low shrubs to form a continuous screen three (3) feet high and ninety-five percent (95%) opaque year around. In addition, one (1) tree is required per thirty (30) lineal feet of landscaped area or as appropriate to provide a tree canopy over the landscaped area. Groundcover plants must fully cover the remainder of the landscaped area. CCC 40.320.010.B(2).

40.320.010.G requires that the applicant install all required landscaping prior to final occupancy or inspection. The conditions of approval should be modified to that effect.

7. NE 25<sup>th</sup> Avenue is a collector street. Therefore CCC 40.320.020.H requires that the applicant install additional landscaping within the 25<sup>th</sup> Avenue right of way abutting the site. CCC 40.320.020 requires that the applicant install landscaping within the right of way prior to final plat approval. However CCC 40.320.020.D authorizes the applicant to postpone landscape installation by providing a bond or other financial assurance. Conditions of approval A.3 and E.9 should be modified to allow the applicant the option of providing a financial guarantee, rather than installing the landscaping, prior to final plat approval.

8. The site is located within a high probability area for containing cultural resources. The County Archaeologist conducted an archaeological predetermination for the site, including a walk over meandering transects and one shovel test probe. The review did not reveal any evidence of cultural items on the site. See Exhibit 8. Archaeological Services of Clark County concluded that no further archaeological work is necessary. State and federal law impose variety of notice and reporting requirements if any cultural resources are discovered in the course of construction. Failure to comply with these State requirements may constitute a Class C felony, subject to imprisonment and/or fines. The examiner has no authority to impose any additional reporting requirements as a condition of this approval.

9. The examiner finds that the F16 driveway design proposed by the applicant will provide and adequate delineation between the public and private streets, based on Mr. Knox's expert testimony. Condition of approval A.5 should be modified to that effect.

#### **D. CONCLUSION**

Based on the foregoing findings and except as conditioned below, the examiner hereby approves PLD 2004-00078 (25th Avenue Townhomes) and related applications in general conformance with the applicant's proposal (Exhibit 5) and the plans and reports associated with this proposal (Exhibits 6, 14 and 15). This approval is granted subject to the requirements that the applicant, owner or subsequent developer (the "applicant") shall comply with all applicable code provisions, laws and standards and the following conditions.

#### **A. Conditions that must be met prior to Final Plat Approval:**

- A-1 The applicant shall submit elevation plans that clearly demonstrate that no more than 40 percent of the total front facade of each unit is garage door area.
- A-2 The applicant shall submit a landscape plan that identifies compliance with L2 Landscape Standards along the site's frontage of NE 25<sup>th</sup> Avenue and L1 Landscape Standards along the site's other property lines.

- A-3 The applicant shall be responsible for the installation of the landscaping required along collector roads by CCC 40.320.030. The frontage landscaping shall be installed within the public right-of-way and shall be in addition to any required landscaping buffer located within the project boundaries. In the alternative, the applicant may provide a bond or other financial guarantee consistent with CCC 40.320.020.D.
- A-4 The applicant shall install a private road, NE 81<sup>st</sup> Street, in accordance with the requirements of CCC 40.350.030(B)(10). The required 20 foot pavement road width shall be measured from bottom (or flow line) of curb.
- A-5 In order to clearly delineate the private road from the public street, a concrete approach, as shown on Standard Drawing F16 shall be used to separate the public and private roads. This will provide a clear separation between the public and private portions of the road, provide pedestrian access across the private road in a sidewalk, and minimize maintenance operations on the public roadway.
- A-6 In accordance with Section CCC 40.380.040(C)(1)(h), all lots in the urban area must be designed to provide positive drainage from the bottom of footings to an approved stormwater system.
- A-7 The applicant shall provide stormwater quality control using County approved BMPs.
- A-8 In accordance with earlier correspondence with the applicant's engineer, the county will accept a 10-foot wide easement for the private storm line which ties into the existing ditch inlet located on an adjacent property. The small pipe diameter and shallow depth of this private storm line are factors which allow the county to accept the reduced width of easement, which is typically 15 feet. This inlet is located within a private easement, and behind an existing wood fence that is likely to be disturbed during construction. The connection will require the written authorization of the owner of the easement.
- A-9 In accordance with the requirements of CCC 40.380.040(H)(3)(b), the applicant shall provide easements or a covenant acceptable to the county for purposes of inspection of privately maintained facilities.
- A-10 Water mains supplying fire flow and fire hydrants shall be installed, approved and operational. Required hydrants shall be installed per Fire Marshal standards with locations approved by the Fire District Chief.
- A-11 The applicant shall ensure that fire apparatus access roads maintain an unobstructed width of not less than 20 feet, an unobstructed vertical clearance of not less than 13.5 feet, with an all weather driving surface capable of supporting the imposed loads of fire apparatus.

### **B. Conditions that must be met prior to Building Permit Issuance:**

- B-1 Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process.
- B-2 School, Park and Traffic Impact Fees are required for lots in this plat - \$1,450.00 (Vancouver School District), \$994.00, Acquisition, \$321.00, Development, (Park District #8), and \$811.90 (Hazel Dell Transportation sub-area) respectively. Impact fees shall be paid prior to issuance of a building permit for each lot. If a building permit application is made more than three years following the date of preliminary plat approval, the impact fees will be recalculated according to the then-current ordinance rate.

### **C. Conditions that must be met prior to issuance of Occupancy Permits:**

- C-1 The corner and intersection sight distances shall remain unobstructed after completion of the project, in accordance with the provisions of Section CCC 40.350.030(B)(8).
- C-2 Install perimeter landscaping consistent with the approved landscape plan prior to final occupancy approval for any homes on the site.

### **D. Notes Required on Final Plat**

The following notes shall be placed on the final plat:

**D-1 Setbacks:**

"The following setbacks apply to the proposed plat:

- a. Eighteen foot front setback for garages (or other similar vehicular shelter).
- b. Ten foot front setback for other buildings.
- c. Nine foot street side setback along NE 25<sup>th</sup> Avenue.
- d. Four foot side setback along lot lines between lots 2 and 3 & lots 6 and 7.
- e. 0-foot side attached setback.
- f. Five foot standard side and rear setback for all other setbacks in the plat".
- g.

**D-2 Archaeological:**

"If any cultural resources are discovered in the course of undertaking the development activity, the Office of Archaeology and Historic Preservation in Olympia and Clark County Community Development shall be notified. Failure to comply with these State requirements may constitute a Class C Felony, subject to imprisonment and/or fines."

**D-3 Private Roads:**



"Clark County has no responsibility to improve or maintain the private roads contained within or private roads providing access to the property described in this plat. Any private access street shall remain a private street unless it is upgraded to public street standards at the expense of the developer or adjoining lot owners to include hard surface paving and is accepted by the County for public ownership and maintenance."

**D-4 Driveways:**

"All residential driveway approaches entering public roads are required to comply with CCC 40.350. No direct access is allowed onto the following streets: NE 25<sup>th</sup> Avenue."

**D-5 Critical Aquifer Recharge Areas:**

"The dumping of chemicals into the groundwater and the use of excessive fertilizers and pesticides shall be avoided. Homeowners are encouraged to contact the State Wellhead Protection program at (206) 586-9041 or the Washington State Department of Ecology at 800-RECYCLE for more information on groundwater /drinking supply protection."

**D-6 Erosion Control:**

"Building Permits for lots on the plat shall comply with the approved erosion control plan on file with Clark County Building Department and put in place prior to construction."

**D-7 Privately Owned Stormwater Facilities:**

"The Developer/Homeowners is responsible for long-term maintenance of the privately owned stormwater facilities."

**D-8 Utilities:**

"An easement is hereby reserved under and upon the exterior six (6) feet at the front boundary lines of all lots for the installation, construction, renewing, operating and maintaining electric, telephone, TV, cable, water and sanitary sewer services. Also, a sidewalk easement, as necessary to comply with ADA slope requirements, shall be reserved upon the exterior six (6) feet along the front boundary lines of all lots adjacent to public streets."

**D-9 Impact Fees:**

"In accordance with CCC 40.620, the School, Park and Traffic Impact Fees for lots in this plat is: \$1,450.00 (Vancouver School District), \$1,315.00 (\$994.00 - Acquisition; \$321.00 - Development for Park District #8), and \$811.90 (Hazel Dell Transportation sub-area) respectively. The impact fees for lots on this plat shall be fixed for a period of three years, beginning from the date of preliminary plat approval, dated \_\_\_\_\_, and expiring on \_\_\_\_\_. Impact fees for permits applied for following said expiration date shall be recalculated using the then-current regulations and fees schedule."

## **E. Standard Conditions**

This development proposal shall conform to all applicable sections of the Clark County Code. The following conditions shall also apply:

**E-1 Land Division:**

Within 5 years of preliminary plan approval, a Fully Complete application for Final Plat review shall be submitted.

**E-2 Pre-Construction Conference:**

Prior to construction or issuance of any grading or building permits, a pre-construction conference shall be held with the County.

**E-3 Erosion Control:**

- a. Prior to construction, the applicant shall submit and obtain County approval of a final erosion control plan designed in accordance with CCC 40.380.
- b. For land divisions, a copy of the approved erosion control plan shall be submitted to the Chief Building Official prior to final plat recording.
- c. Erosion control facilities shall **not** be removed without County approval.
- d. Prior to construction, erosion/sediment controls shall be in place. Sediment control facilities shall be installed that will prevent any silt from entering infiltration systems. Sediment controls shall be in place during construction and until all disturbed areas are stabilized and any erosion potential no longer exists.

**E-4 Excavation and Grading:**

- a. Excavation/grading shall be performed in compliance with Appendix Chapter 33 of the Uniform Building Code (UBC).
- b. Site excavation/grading shall be accomplished, and drainage facilities shall be provided, in order to ensure that building foundations and footing elevations can comply with CCC 14.04.252.

**E-5 Stormwater:**

Prior to construction, the applicant shall submit and obtain County approval of a final stormwater plan designed in conformance to CCC 40.380.

**E-6 Transportation:**

Prior to construction, the applicant shall submit and obtain County approval of a final transportation design in conformance to CCC 40.350.

**E-7 Health District:**

Submittal of a “Health Department Evaluation Letter” is required as part of the Final Construction Plan Review application. If the Evaluation Letter specifies that an acceptable “Health Department Final Approval Letter” must be submitted, the

Evaluation Letter will specify the timing of when the Final Approval Letter must be submitted to the county (e.g., at Final Construction Plan Review, Final Plat Review or prior to occupancy). The Health Department Evaluation Letter will serve as confirmation that the Health Department conducted an evaluation of the site to determine if existing wells or septic systems are on the site, and whether any structures on the site have been/are hooked up to water and/or sewer.

**E-8 Utilities:**

A copy of the final acceptance letter from the sewer and water purveyor shall be submitted to the Health District with the final plat mylar. The applicant shall comply with all requirements of the purveyor.

**E-9 Landscaping:**

Prior to recording the final plat, the applicant shall submit a copy of the approved landscape plan(s) for any public right-of-way (if applicable). After the landscaping is installed the applicant shall submit a letter signed and stamped by a landscape architect licensed in the state of Washington certifying that the landscape and irrigation (if any) have been installed in accordance with the attached approved plan(s) and verifying that any plant substitutions are comparable to the approved plantings and suitable for the site.

DATED this \_\_\_\_\_ day of December, 2004

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Joe Turner, AICP  
Clark County Land Use Hearing Examiner